AUDUBON SOCIETY OF PORTLAND, ET AL.

IBLA 93-540 Decided March 11, 1994

Appeal from a decision of the Andrews Resource Area Manager, Bureau of Land Management, to gather wild horses from the South Steens Herd Management Area. EA-OR-026-93-008.

Appeal dismissed in part; decision affirmed.

1. Administrative Procedure: Generally--Practice Before the Department: Persons Qualified to Practice--Rules of Practice: Appeals: Notice of Appeal

A notice of appeal signed by an individual on behalf of other parties (two associations and two individuals) is not a valid notice of appeal as to those other parties unless the signer is authorized to represent them. Where the signer is neither an attorney, an officer in the associations, nor a family member of the individuals, the signer does not meet the criteria allowing her to practice before the Department on their behalf, and the notice of appeal is properly dismissed as to the parties that she is not authorized to represent.

2. Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal

In order to establish standing to appeal under 43 CFR 4.410, an organization must show that it is a party to a case and that it has been adversely affected by the appealed decision. Where an appellant has participated before BLM during its consideration of the decision under appeal, it is a party to the case. Where appellant makes a specific, colorable allegation that its members use an area affected by a BLM decision, it is "adversely affected" within the meaning of 43 CFR 4.410(a).

3. Federal Land Policy and Management Act of 1976: Land- Use Planning--Wild Free-Roaming Horses and Burros Act

A decision to gather wild horses from a herd management area in order to avert deterioration of the range and to pursue a thriving natural ecological balance
in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1988), is properly affirmed where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

APPEARANCES: Deanna Mueller-Crispin for Audubon Society of Portland; Donald P. Lawton, Esq., Office of the Solicitor, Pacific Northwest Region, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Audubon Society of Portland (PAS), the Oregon Natural Desert Association (ONDA), the Oregon Natural Resources Council (ONRC), Bill Marlette, and Irene Vlach have appealed from a decision of the Andrews Resource Area Manager, Bureau of Land Management (BLM), to gather approximately 181 wild horses from the South Steens Herd Management Area (HMA)
and the adjacent Fish Creek/Big Indian Allotment. 1/ The decision and
the supporting environmental assessment (EA), EA-OR-026-93-008, were
dated June 16, 1993.

BLM's decision record for this "gathering" includes this rationale:

The number of horses within the HMA will be in excess of the appropriate management level (AML) by the summer of 1993. The AML was determined when available forage was allocated for horses in the Management Framework Plan (MFP) decision in 1982 and then monitored over the years to determine if the resources were balanced.

In 1992, no livestock were grazed within the HMA. In 1993, the number will be about one-third of the South Steens permit
and the riparian [sic] will be protected by herding livestock
away from the critical areas.

The drought, which has affected the area for the last 6 years, has forced livestock and wild horses to utilize some areas heavier than others, especially along and around perennial streams. Monitoring the riparian areas of upper Home Creek and the South Fork Blitzen River has indicated that utilization

1/ As discussed below, of the listed appellants, only PAS filed a cognizable notice of appeal. Accordingly, we shall refer only to a single appellant.

> by livestock and wild horses is consistently heavy in some areas. The effects of increased numbers of horses grazing yearlong in that area, combined with the seasonal use by livestock, could cause irreversible damage to streambanks and vegetative diversity. Because of that, those animals consistently utilizing critical areas will be gathered before animals in non-critical areas.
>
> The need to balance horse numbers with objectives for livestock grazing, recreation, Wild and Scenic Rivers, Wilderness Study Areas, and wildlife habitat makes the periodic removal of excess horses an essential management practice.

BLM determined that the proposal comports with the Andrews MFP and the South Steens Herd Management Area Plan, and that the roundup would not constitute a major Federal action significantly affecting the quality of the human environment, so that no environmental impact statement was necessary under the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (1988).

BLM's EA emphasized that the primary purpose of the roundup was to alleviate damage to areas of riparian and upland vegetation in the HMA where livestock and wild horses had concentrated due to seasonally limited water sources exacerbated by drought. BLM stated, "The damage could be controlled if wild horse numbers were brought down to the appropriate management level of 159 to 304 head and livestock were placed in a grazing system that meets the objectives of the key forage plants" (EA at 1). In September 1992, BLM counted 252 horses within the HMA; most were concentrated along three permanent watercourses. BLM moved 18 more into the HMA due to lack of forage elsewhere. Given the counted animals, the added 18 and the "expected colt crop" in spring of 1993, BLM estimated that the HMA would contain about 330 wild horses by midsummer 1993.

Appellant asserts that BLM's decision should be set aside because (1) the AML for this herd was "administrative"; (2) BLM has not demonstrated that the AML would sustain a thriving ecological balance between livestock, wildlife, wild horses, and vegetation; and (3) available data do not indicate that immediate removal is necessary to prevent a deterioration in range condition due to overpopulation of wild horses.

By order dated September 3, 1993, we noted that BLM's decision was stayed pending consideration of the appeal by operation of 43 CFR 4770.3(c) and expedited consideration. We also ordered a showing of the standing of all parties named in the notice of appeal, as well as of the authority of Deanna Mueller-Crispin to represent those other than PAS. We also ordered BLM to produce the case file at that time.

We note initially that although BLM submitted several documents from the administrative record with its answer to appellant's statement of reasons, it did not submit the complete, original case file within 10 business days as it is supposed to do. Thana Conk, 114 IBLA 263, 273 (1990); BLM Manual 1841.15 A. Absent a complete record, this Board and a reviewing court are incapable of complying with the review requirements mandated

by the Administrative Procedure Act. Shell Offshore, Inc., 113 IBLA 226, 233-34, 97 I.D. 73, 77-78 (1990). Review is to be based on the full administrative record that was before the Secretary at the time he made his decision (Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420 (1971)), and for that to be possible we must have all documents and materials directly or indirectly considered by agency decisionmakers, including evidence contrary to the agency's position. Exxon Corp. v. Department of Energy, 91 F.R.D. 26, 33 (N.D. Tex. 1981). See Thompson v. U.S. Department of Labor, 885 F.2d 551, 555 (9th Cir. 1989); Walter O. Boswell Memorial Hosp. v. Heckler, 749 F.2d 788, 792 (D.C. Cir. 1984).

[1] The notice of appeal in this matter states that it was "filed by" PAS and was signed by Deanna Mueller-Crispin, Conservation Committee, PAS. The notice of appeal document also indicates that it was filed "on behalf of" the other parties listed above, including two groups and two individuals. In response to our order, Mueller-Crispin acknowledged that she is an officer of PAS, but not of either of the two other groups, that she is not a family member of either of the two individuals, and that she is not a licensed attorney. Thus, she does not meet the criteria allowing her to practice before the Department, except insofar as she may represent PAS. See 43 CFR 1.3.

The term "**Department** includes any bureau, office, or other unit of the Department," thus embracing this Board. 43 CFR 1.2(a). "Practice" before the Department is defined as follows:

> **Practice** includes any action taken to support or oppose the assertion of a right before the Department or to support or oppose a request that the Department grant a privilege; and the term "practice" includes any such action whether it relates to the substance of, or to the procedural aspects of handling, a particular matter.

43 CFR 1.2(c). Thus, the rules of practice govern the filing of procedural documents with this Board, including the notice of appeal. Southern Utah Wilderness Alliance, 108 IBLA 318, 321 (1989).

As Mueller-Crispin was not authorized to practice before this Board on behalf of ONDA, ONRC, Bill Marlette, or Irene Vlach, the filing of a notice of appeal by her on their behalf was not effective to institute an appeal in their names. Accordingly, those appeals are properly dismissed. David D. Beal, 90 IBLA 87 (1985).

[2] In response to the Board's order, Mueller-Crispin also stated that PAS' members use the area in question for recreational and other purposes that could be adversely affected by range degradation caused by excessive populations of grazing animals. Standing before the Board of Land Appeals is governed by 43 CFR 4.410(a). To have standing, an appellant must be a party to a case and also be adversely affected by the decision being appealed. Colorado Open Space Council, 109 IBLA 274, 279

(1989). PAS participated in the process that led to the BLM decision by filing comments on the EA, making it a party to the case within the meaning of 43 CFR 4.410(a). Further, because PAS made a specific, colorable allegation that its members use the area affected by BLM's proposal, it is "adversely affected" within the meaning of 43 CFR 4.410(a). Predator Project, 127 IBLA 50, 53 (1993). PAS has standing to appeal. 2/

[3] Turning to the merits of the appeal, appellant presents a broad attack upon present and past range management in the area, particularly objecting to the removal of horses to protect the range when greater numbers of cattle will soon return to the same range. Appellant asserts that the AML numbers were arbitrarily designated for administrative convenience and that monitoring data does not support BLM's determination that there are excess animals or that removal is necessary to foster a thriving natural ecological balance between livestock, wildlife, wild horses, and vegetation.

The Wild Free-Roaming Horses and Burro Act (Act), 16 U.S.C. § 1333(a) (1988), requires BLM to manage populations of wild free-roaming horses "in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands." This statutory obligation includes removal of excess wild horses from the range to achieve AMLs and protect the range from deterioration associated with overpopulation. 16 U.S.C. § 1333(b)(2) (1988). Excess animals are those that must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationships in an area. 16 U.S.C. § 1332(f) (1988). The Act preserves a place for wild free-roaming horses on the range, but not in unlimited numbers and not with a priority over other multiple uses for which the range is managed. American Horse Protection Association v. Andrus, 460 F. Supp. 880, 885 (D. Nev. 1978), vacated in part on other grounds, 608 F.2d 811 (9th Cir. 1979).

A determination that removal of wild horses is warranted must be based on research and analysis, and on monitoring programs involving studies of grazing utilization, trend in range condition, actual use, and climatic factors. Animal Protection Institute of America, 117 IBLA 4, 5 (1990); Animal Protection Institute of America, 109 IBLA 112, 120 (1989). As appellant acknowledges, where the record establishes that an area is either currently

2/ However, Mueller-Crispin did not explain how the other parties named in the notice of appeal are adversely affected by the BLM decision. In the absence of any pleadings alleging facts showing that an appellant uses the lands affected by the BLM decision or has any right, title or interest in it, it is not established that the appellant is adversely affected by the BLM decision. Glenn Grenke v. Bureau of Land Management, 122 IBLA 123, 128 (1992); Donald Pay, 85 IBLA 283, 285-6 (1985). See Sierra Club v. Morton, 405 U.S. 727, 738 (1972). ONDA, ONRC, Bill Marlette, and Irene Vlach have not shown that they have standing to appeal this decision, and, even if they had filed a cognizable notice of appeal, their appeals would be properly dismissed for lack of standing.

experiencing resource damage or there is a significant threat of resource damage, removal is warranted. 109 IBLA at 114.

The assertions of a lack of monitoring by BLM are primarily addressed to planning documents. Inspection of the case record for the decision on appeal reveals that BLM did monitor the area to determine the extent of
use by horses. BLM summarized the level of use in 14 monitoring plots in the South Steens allotment, both in 1991, when both cattle and horses used the area, and in 1992, when only horses were present (EA-OR-026-93-008 Appdx. 1). Of eight monitoring plots with riparian forage, six showed decreased use in 1992, one showed increased use, and one remained the same (Appendix I-1). Of six additional riparian plots considered to be in fair or poor condition, three showed heavy horse use with a downward or "stat" trend, and the other three showed no horse use or only traces of use with
an upward trend. Thus, even in 1992, with relatively light use on the range, there were at least scattered areas of heavy use along watercourses.

On September 18, 1992, BLM conducted an aerial survey, counting 252 horses, including animals concentrated along permanent water sources that would ordinarily have been dispersed farther north in a wetter year. On October 8 and 22, 1992, BLM staff spot checked riparian areas on foot, finding patchy areas of heavy use by wild horses. BLM staff reported continuing riparian use during drought, even in the absence of cattle
in 1992.

The case record supports the BLM decision to gather excess horses. Recent BLM data reflect varied vegetative conditions with heavy use by horses in areas where the animals had easiest access to water during the drought. Appellant has not refuted BLM's findings that horses should be removed to reduce pressure on riparian areas in this HMA.

The Board will affirm a decision to gather wild horses from a herd management area in order to avert deterioration of the range and to pursue a thriving natural ecological balance in accordance with section 3(b) of
the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1988), where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis. Animal Protection Institute of America, 117 IBLA 208 (1990).

Many of appellant's objections were not addressed to horse management, but to total numbers of grazing animals in the Steens area, including cattle. It argued that, in setting the AML, BLM should also take into account the fact that cattle would be grazing the South Steens allotment in 1994, when the full allocation of cattle was scheduled to return. Appellant argues, in effect, that if BLM reduces horse use, it should also reduce
use by cattle.

However, the prospect of increased numbers of cattle in the allotment in 1994 does not go against the BLM decision to remove wild horses. When the cattle return, pursuant to a presumptively valid grazing allotment, the

forage available for wild horses will naturally diminish. BLM's decision is consistent with ensuring that forage will be available as allocated. 3/

Appellant has challenged the AML, arguing that target numbers of horses were not properly determined. The decision on appeal, however, is not a planning decision, but a decision to implement prior planning parameters
in view of current range conditions. This Board will affirm a BLM decision implementing a resource management plan when it is based on a consideration of all relevant factors and is supported by the record, absent a showing of clear reasons for modification or reversal. Animal Protection Institute of America, 117 IBLA 208, 216 (1990), and cases cited.

BLM has determined the carrying capacity of the area, arriving at target numbers of horses on the range only after analysis. See Andrews MFP. This case record does not indicate that the target numbers of horses were drawn randomly or for administrative convenience. Instead, BLM showed a continuing rational basis for its determination that the numbers of horses in excess of the target AML would interfere with its statutory goal of a "thriving ecological balance" on the range. 4/ BLM's decision is properly affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals from the decision of the Andrews Resource Area Manager, BLM, are dismissed in part and the decision is affirmed.

David L. Hughes
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

3/ In effect, appellant has suggested that BLM simply has not gone far enough in its efforts to achieve a thriving natural ecological balance. Its arguments might logically suggest that all horses should be removed, rather than some of them, given the continuing existence of the grazing allotment, which is not on appeal here.

4/ Wild horses continued to graze some riparian areas heavily in 1993. Particularly heavy damage to a privately owned riparian area within the South Steens Wild Horse HMA prompted the landowner to request removal
of 75 horses, pursuant to 16 U.S.C. § 1334 (1988) and 43 CFR 4720.2-1. These animals are among those BLM proposes to gather from the HMA (Memorandum from the Burns District Manager, BLM, to the Oregon State Director, BLM, dated Nov. 15, 1993).